

SENATE JOURNAL
EXHIBIT NO. 1
DATE 2/3/11
PAGE 559

The Proposed Parental Rights Amendment to the Constitution

SECTION 1

The liberty of parents to direct the upbringing and education of their children is a fundamental right.

SECTION 2

Neither the United States nor any state shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

SECTION 3

No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.

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Amendment Section 1:

SUMMARY: Parental Rights, currently recognized as implied rights, will become specifically enumerated in the text of the Constitution.

"The liberty of parents to direct the upbringing and education of their children..."

In the 1925 decision of *Pierce v. Society of Sisters*, the U.S. Supreme Court struck down a compulsory attendance act that required all parents to send their students to public schools, instead of private or religious schools. The court concluded that the act was unconstitutional because it "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."

"...is a fundamental right."

In 2000, the Supreme Court cited a long train of previous cases which showed that the right of parents to direct the education and upbringing of their children is a fundamental right. The following passage, taken from *Troxel v. Granville*, highlights the rich history of this fundamental right:

("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. (emphasis added)

Amendment Section 2:

SUMMARY: While parental rights do not include a right to commit child abuse or neglect, they are due the same high legal protection as other fundamental rights.

"...demonstrating that its governmental interest as applied to the person..."

Because fundamental rights are so important to our freedom as Americans, the government must meet a heightened burden of proof in order to restrict those rights. In legal terms, the government's case begins with a positive demonstration – they must prove that there is a government interest in restricting the right, and that the government has a specific interest in restricting the right of the particular parents whose actions are being challenged.

"...of the highest order and not otherwise served."

In 1972, the U.S. Supreme Court held that in order for the state of Wisconsin to override the rights of Amish parents, the government had to show that it had a compelling interest in requiring students to stay in school until age 16. Speaking of the right of the parents, the Court said that "the essence of all that has been said and written on the subject is that *only those interests of the highest order and those not otherwise served* can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (emphasis added).

The Supreme Court has required the government to follow this standard whenever there is a violation of a fundamental right.

Amendment Section 3:

SUMMARY: Neither the Senate's treaty power nor the courts can subject parental rights to international law.

"No treaty may be adopted nor any source of international law employed..."

According to Article 38 of the *Statute of the International Court of Justice*, international law is comprised of international treaties, international customs which have been accepted as law by general practice, the general principles of law recognized in civilized nations, and the judicial decisions and teachings of legal authors and scholars. All four channels of international law currently pose a significant threat to parental rights.

"...to supersede, modify, interpret or apply to the rights guaranteed by this article."

The Parental Rights Amendment would prohibit the use of all four sources of international law in determining what rights of parents should be protected. Treaties that were ratified by the United States would need to be interpreted in light of what the Amendment guarantees to citizens, instead of using the treaty to interpret the meaning and extent of constitutional liberties. Furthermore, federal courts would not be able to impose harmful principles of customary international law on parents, because the rights granted in the text of the Constitution override and overwhelm conflicting principles of customary international law.

Passing the Parental Rights Amendment

Every year, some two hundred amendments to the U.S. Constitution are introduced, but only **33** have been passed by both the House and the Senate in Congress, and of these, only **27** have been ratified by three-quarters of the states.

These numbers *include* the ten amendments in the Bill of Rights.

An amendment to the Constitution begins when a bill is *introduced* in Congress.

The bill is then assigned to a *committee*, which considers the proposed text, altering it as needed. Because of the vast number of bills that Congress receives each year, many are not even considered by committees, and many more are voted down before they make it back to the House or Senate. If the committee approves the bill, it is then debated and must be approved by a two-thirds vote of both the House *and* the Senate. Only thirty-three proposed amendments have cleared this threshold.

Once passed by Congress, the amendment must be ratified by three-fourths of the states. If it gains the approval of 38 states, it joins the elite group of 27 constitutional amendments which have been added to the Constitution. SJ9 urges the Montana delegation to support the ratification of the amendment.

Why do we need SJ9 & Parental Rights Amendment?

Confusion in the Courts about Parental Rights

The Federal courts are full of confusion when it comes to parental rights, especially after the Supreme Court's *Troxel v. Granville* decision in 2000, which left **no clear standard** for future cases. With six different written opinions, *Troxel* indicates an uncertain status of parental rights with an all-too-certain conclusion: parental rights are vulnerable and inadequately protected from government intrusion.

Some Federal and State cases that have since been affected by *Troxel*'s unclear decision include:

- **Dutkiewicz v. Dutkiewicz (2008)**: the Supreme Court of Connecticut used *Troxel* to support the fundamental nature of parental rights, but noted that matters need to be decided on a case-by-case basis based on Justice Kennedy's dissent.
- **Frazier ex rel. Frazier v. Winn (2008)**: a court in the 11th Circuit weighed the child's right to religious freedom against the parent's right to direct his upbringing and education.
- **Mayberry v. Independent School Dist. No. 1 of Tulsa County, Okla (2008)**: the District Court in Oklahoma ruled that parents did not have the right to be on public school property while children were in attendance. For many examples of how *Troxel* has left a confusing precedent in the state and federal courts, read the full article by Dr. Michael Farris [here](#), or read the *Troxel* decision [here](#).

The Overapplication of Federal Law

Federal laws like the Family Educational Right to Privacy Act (FERPA) or the Health Insurance Portability and Accountability Act (HIPAA) were intended for good, to enact privacy regulations preventing third parties from accessing educational or medical records. But they include ambiguities with a lot of room for interpretation. As a result, both of these pieces of legislation have been interpreted in ways that shut parents out of their children's lives by denying them access to important information about their children.

The vital child-parent relationship is deeply valued in millions of homes across the nation. Yet most American families have no idea of the extent to which this precious relationship is now jeopardized by the threat of international treaty law.

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U.N. Convention on the Rights of the Child

Today the U.N. Convention on the Rights of the Child (UNCRC) is approaching a possible ratification by the United States Senate. This treaty, as harmless as it may appear, is capable of attacking the very core of the child-parent relationship, removing parents from their central role in the growth and development of a child, and replacing them with the long arm of government supervision within the home.

WHAT IS THE UNCRC?

The UNCRC is an international treaty focused on promoting the rights of children and seeking to give children priority in the implementation of governmental measures. The Convention claims to offer a road map that will guide government officials in the improvement of laws and policies, by defining which rights the government should give to children.

A VEILED THREAT

Since its introduction in 1989, the Convention has been ratified by every nation in the world except for the United States and Somalia. The CRC was signed by President Clinton in 1995, but early opposition in the Senate persuaded Clinton not to submit the treaty to the Senate for ratification.